In the Supreme Court of the United States.

DECEMBER TERM, 1868.

UNITED STATES, appellants,
vs.
THE STEAMER LELIA.
No. 26.

Appeal from the Circuit Court of the United States for the eastern district of Louisiana.

STATEMENT FOR THE UNITED STATES.

This case is similar to the one just before it on the docket. The claimant is Harlow J. Phelps, of New Orleans, La., who appears to have been owner of the Lelia in 1864.

1. The testimony of Sanders shows that the steamer was in the confederate service, on Red river, "the most of the time in 1863 and 1864, carrying quartermaster's and commissary stores," etc. (Record, p. 13.) Airy swears that she was engaged in carrying confederate corn a couple of months or over, in the latter part of 1864, (Record, p. 14;) and Marsh states that he saw her similarly employed in 1863 or 1864; also saw confederate troops on her; and he likewise testifies that claimant, Phelps, was on board of her "during this time of confederate service." (Record, p. 14.)

Here it affirmatively appears that the steamer was knowingly used or employed by her owner in promoting the late rebellion, and thus was forfeitable under the act of August 6, 1861.

2. On the other hand, there is a total failure of proof in support of the defence set up by claimant, viz: that the employment of the boat was compulsory. To establish this, the evidence should show the exercise, on the part of the rebel authorities, of actual force against the owner personally, or the use of threats and intimidation, placing him under a reasonable fear of death or serious bodily harm—neither of which facts is proven. It is submitted that the mere circumstance, which is attempted to be shown, that the boat was performing rebel service under military orders, or indeed entered the rebel service by virtue of such orders, raises no presumption that either was done without the owner's consent.

WM. M. EVARTS,
Attorney General.
J. HUBLEY ASHTON,
Ass't Attorney General.

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